Council on Law Enforcement Education and Training

2022 Legal Update

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By statute, 70 O.S. § 3311.5(E), the Council on Law Enforcement Education and Training (CLEET) is required to update training related to legal issues, concepts, and state laws on an annual basis and no later than 90 days following the adjournment of a legislative session. This year's legal update continues efforts started in 2021 to incorporate a review of some significant cases that affect Oklahoma peace officers in addition to applicable statutory and rules changes. I acknowledge the efforts of attorney James L. Hankins, whose Oklahoma Criminal Defense Weekly newsletter does a masterful job of reviewing and highlighting important criminal law appellate opinions and upon whose work I have relied in identifying many of the cases highlighted in this update. I also am grateful to Kate Springer, assistant general counsel at CLEET, for proof-reading and link-checking this update.

Please keep in mind that this document is, by necessity, a limited summary. If we were to address and link all the new cases and statutes that may be applicable, this document could run to several hundreds or even thousands of pages. Even a detailed summary of every case or provision would be unwieldy. I have attempted to include all new or revised statutes that have a direct or significantly tangential tie to law enforcement. I fully admit there may be provisions that directly impact law enforcement which I have missed in my efforts to review the latest legislative session and I am certain that my discernment of "significantly tangential" provisions will be different than many of yours would have been. My brief summaries of such provisions are meant only to highlight new or changed language and should not be relied upon as complete descriptions. Such summaries are also not offered as legal advice. Therefore, you are encouraged to read in their entirety any newly enacted or revised statutes, all of which are (or will be) available at www.oscn.net, and to seek guidance from competent legal counsel affiliated with your organizations before determining how or if the changes affect you. Copies of enrolled bills are also available on the Oklahoma Secretary of State's website: sos.ok.gov/gov/legislation.aspx. Hyperlinks to the enrolled bills are provided in this document as are hyperlinks to the various statutes, case opinions, constitutional provisions, and supporting materials discussed in the text. Please note that some of the hyperlinks may not bring up the new statutory language until the effective date of the enactments. Best efforts have been made to test the hyperlinks but I acknowledge my own limitations. My apologies for any that fail to work as expected.

Finally, I have done my best to avoid too much editorializing, pontificating, or snarky commentating. To the extent I have failed, those extraneous comments are mine alone and do not reflect the official position of CLEET, the State of Oklahoma, or any other entity you may be tempted to complain about because of my statements.

CASES—INDIAN COUNTRY JURISDICTION

Oklahoma v. Castro-Huerta, 597 U.S. ____ (2022). States Have Concurrent Jurisdiction with the Federal Government to Prosecute Non-Indians Who Commit Crimes Against Indians in Indian Country.

In somewhat of a surprise opinion (at least a surprise to me), the Supreme Court ruled on June 29, 2022, that states have (and have always had—at least since the late 1800s) concurrent jurisdiction with the

federal government to prosecute non-Indians who commit crimes against Indians in Indian Country unless that jurisdiction has been otherwise preempted.

According to the opinion, "a State has jurisdiction over all of its territory, including Indian country." Slip Op. at 5. "Indian reservations are 'part of the surrounding State' and subject to the State's jurisdiction[,]" the Court opined, "'except as forbidden by federal law.'" *Id.* The surprising part to me is that the Court rejected the argument that the General Crimes Act, 18 U.S.C. § 1152, preempts state jurisdiction in such Indian country cases. As you may know, the General Crimes Act provides that "[e]xcept as otherwise expressly provided by law, the general laws of the United States as to the punishment of offenses committed in any place within the sole and exclusive jurisdiction of the United States, except the District of Columbia, shall extend to the Indian country." We at CLEET, like many other legal educators around the country, have consistently taught for years that Section 1152 meant that Indian country is like other federal enclaves—military bases, national parks, post offices—and so is subject not to state jurisdiction but only to federal jurisdiction. According to *Castro-Huerta*, we were all wrong.

The Court's determination that we have all been misapplying the General Crimes Act is reminiscent of the Court's declaration in *McGirt* that reservations existed all around us, we were just too ignorant to recognize the fact. I'll let you decide whether these decisions are a reflection on Oklahoman ignorance or on judicial hubris or some combination of the two.

However, the moral of the story is that non-Indian offenders in Oklahoma Indian Country may be charged and tried by state authorities regardless of the racial/ethnic status of the victim. The Oklahoma Attorney General's Office has produced a memo for law enforcement agencies and prosecutors to help explain the case's impacts.

State v. Lawhorn, 2021 OK CR 37. Quapaw Nation Reservation Is Indian Country.

In an opinion issued in October 2021, the Oklahoma Court of Criminal Appeals determined that Congress had established a Quapaw Nation Reservation by a series of treaties in the 1800s and that such reservation had never been disestablished. As such, OCCA held that the lands within the historic boundaries of the Quapaw Nation constitute Indian Country and under *McGirt*, the Major Crimes Act, and other federal legislation, the state has no criminal jurisdiction in that territory over crimes committed by or against Indians.

Martinez v. State, 2021 OK CR 40. Kiowa-Comanche-Apache Reservation Was Disestablished by Congress and as Such Is Not Indian Country.

In an opinion issued in December 2021, the Court of Criminal Appeals assessed a claim that territory within the historic boundaries of the Kiowa-Comanche-Apache Reservation was subject to Indian Country jurisdictional limitations. In its opinion, the OCCA hearkened back to decades-old opinions from the Tenth Circuit and itself which found that the reservation had been disestablished by Congress in 1900. Because the reservation had been disestablished by Congress, it was not and is not Indian Country under *McGirt*.

CASES—QUALIFIED IMMUNITY

City of Tahlequah v. Bond, 595 U.S. ___ (2021). Qualified Immunity to Excessive Force Claim.

In this case that originated in the Eastern District of Oklahoma, three Tahlequah officers were dispatched to a home where Dominic Rollice, an ex-husband of the resident, was intoxicated, inside the woman's garage, and was refusing to leave the premises. When the officers arrived, they found Rollice in the garage and started speaking to him from the doorway of the side entrance. Rollice was upset that police were there to take him to jail, but the officers informed him they just wanted to get him away from the property and would give him a ride to do so. Rollice however, refused to comply with the officers' requests, fidgeted with something in his hands, and backed away when officers took a step toward him. Eventually, Rollice turned his back on the officers and walked toward the back of the garage where tools were hanging over a workbench. Officers followed Rollice but none was ever closer to him than six feet. Officers testified they ordered Rollice to stop before he got to the workbench but he failed to heed their commands, continued to the workbench, and picked up a hammer, then turned and faced officers with the hammer grasped in both hands, as if preparing to swing a baseball bat. Rollice then raised the hammer to shoulder level and advanced on the officers as officers drew their weapons and started backing up. Despite repeated warnings to put down the hammer, Rollice stepped out from behind a piece of furniture and raised the hammer over his head, taking a stance as if he would throw the hammer at the officers or perhaps charge at them. In response, two of the officers opened fire killing Rollice.

Rollice's estate filed suit against the officers and others claiming that the officers used excessive force. The Eastern District granted the officers' motions for summary judgment determining that the use of force was reasonable and that qualified immunity applied. The Tenth Circuit, however, reversed the district court's ruling and found that Tenth Circuit precedent "allow[ed] an officer to be held liable for a shooting that is itself objectively reasonable if the officer's reckless or deliberate conduct created a situation requiring deadly force." Slip Op. at 2.

In a "per curiam"* opinion, the Supreme Court, after reviewing the record of the case—including the bodycam footage of the incident, declared that "[o]n this record, the officers plainly did not violate any clearly established law." Slip Op. at 3.* Qualified immunity shields officers from civil liability, the Court explained, "so long as their conduct 'does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" *Id.* (internal citation omitted). Further, the Court reiterated its previous explanation that "qualified immunity protects 'all but the plainly incompetent or those who knowingly violate the law.'" *Id.* (internal citation omitted).

Sounding somewhat frustrated at the Tenth Circuit's ruling, the Court noted that it has "repeatedly told courts not to define clearly established law at too high a level of generality." *Id.* Instead of relying on "suggestions" contained in opinions to define "clearly established law," the Court said, clearly established law must have "contours" that are "so well defined that it is 'clear to a reasonable officer that his conduct was unlawful in the situation he confronted.'" *Id.* (internal citations omitted). This principle is

"'especially important in the Fourth Amendment context,' where it is 'sometimes difficult for an officer to determine how the relevant legal doctrine, here excessive force, will apply to the factual situation the officer confronts.'" *Id*. (internal citations omitted).

This opinion was a pretty full-throated defense of the qualified immunity doctrine. It also illustrates the power of bodycam audio and video recordings.

*Wonder what "per curiam" means or what a "slip op" is? Per curiam is a legal Latin phrase meaning "by the court as a whole" and refers to a unanimous opinion of the court that does not list a specific, individual justice as its author. A "slip op" or "slip opinion," is the first version of the Supreme Court's opinion in a case, which is posted to the court's website, before the opinion is published in the bound volumes of the United States Reports. In this document, we also use the term "slip op" to refer to published cases from the Tenth Circuit that are available in first version form on the court's website but are not yet "published" in the applicable reporter.

Simpson v. Little, 16 F.4th 1353 (10th Cir. 2021). Denial of Qualified Immunity in Excessive Force Claim.

Simpson is a case of an officer-involved shooting in Bixby. The officer pursued what he believed was a stolen vehicle. The driver turned into a dead-end street, drove into the grass at the end of the street to perform a three-point turn, and then headed back out of the street again. As the vehicle was coming back down the street, the officer exited his vehicle, drew his weapon, and started yelling for the driver to exit the vehicle and get onto the ground. The driver ignored the commands and drove around the officer. The officer opened fire, apparently as the vehicle went past him, because the court's assessment of the evidence showed the "bullet defects beg[a]n near the middle of the driver's side window and continue[d] along the side of the SUV, and two shots struck the rear of the vehicle." *Simpson*, 16 F.4th at 1358. "[N]one of the bullets struck the front of the vehicle." *Id*. The driver continued down the street and traveled for several blocks until he "dr[ove] off the road, across a yard, and into a vacant field," where other Bixby officers intercepted him. Officers soon determined that the driver had been shot. They removed him from his SUV and began first aid until an ambulance could get him to a hospital. The driver died later that day from two gunshot wounds. "The bullets which struck [the driver] in his left hip came through the driver's door of the SUV and traveled 'Left to right; Back to front; Downward.'" *Id*.

Following her son's death, the driver's mother sued the officer in federal court under 42 USC § 1983, alleging the officer used excessive force against her son in violation of the Fourth and Fourteenth Amendments. The officer moved for summary judgment, arguing he was entitled to qualified immunity because his use of deadly force was (1) reasonable and therefore constitutional and (2) did not violate clearly established law. The federal district judge denied the officer's motion, finding he was not entitled to qualified immunity.

According to the Tenth Circuit, "the district court denied [the officer's] motion for summary judgment because (1) issues of fact precluded finding that he did not violate [the driver's] constitutional rights, and (2) *Cordova v. Aragon*, 569 F.3d 1183 [(10th Cir. 2009)], clearly established the applicable law."

Simpson, 16 F.4th at 1631. *Cordova* established that firing into a vehicle when the officer is not facing an "actual and imminent" threat or "'was not in immediate danger' at the time of the shooting[,]" was not a reasonable use of force. *Id*. at 1364. In *Cordova*, the officer was involved in trying to stop a driver who had run red lights, driven straight at police—including trying to ram the officer's patrol car, and driven the wrong way down a highway. At some point in the chase, the officer exited his vehicle and attempted to halt the driver using "stop sticks." The driver, however, steered his vehicle directly at the officer. As he was moving out of the way of the vehicle, the officer fired at the driver. Some of the officer's shots hit the side of the truck and one struck the driver in the back of the head, killing him. However, because the officer was not in imminent danger of being run over when he fired the shots, the Tenth Circuit determined the use of deadly force was unreasonable. *Id*. The district court in *Simpson* applied similar logic concluding that because the driver was not attempting to harm the Bixby officer, the officer's decision to fire into the side of the vehicle was unreasonable and, in light of *Cordova*, the officer should have known his actions would be unconstitutional.

The Tenth Circuit noted that when looking at "clearly established law" in the context of a qualified immunity inquiry, "the relevant question is whether" the case relied upon by the plaintiff "provided 'fair warning' to a reasonable officer in [a similar] position that his actions violated the Fourth Amendment." *Id*. at 1366. "[A] prior case need not be exactly parallel to the conduct [in the case under review] for the officials to have been on notice of clearly established law." *Id*. In this case, "*Cordova* clearly established that officers may not use lethal force against a driver who does not pose an immediate threat to officers or third parties." *Id*.

Now remember, a denial of qualified immunity does not mean that you automatically lose the case. It just means that the plaintiff is able to have their day in court and attempt to prove that your use of force was unreasonable and unconstitutional.

CASES—SEARCH AND SEIZURE

Caniglia v. Strom, 593 U.S. ___ (2021). Warrantless Entry Cannot Be Justified by Generalized "Community Caretaking Exception."

In this case, out of Rhode Island, the Supreme Court dispelled any ideas that the concept of peace officers serving in "community caretaking functions" would justify warrantless searches and seizures in a home. Slip Op. at 1.

Here a wife and husband had an argument inside their home and the husband produced a handgun and asked his wife to "shoot [him] now and get it over with." *Id*. Instead, she left the home and went and spent the night at a hotel. The next morning, after failing to reach her husband by telephone, the wife called police to request a "welfare check." Officers accompanied the wife to the home and found the husband on the porch. *Id*. at 2. Husband spoke with officers and generally confirmed wife's account of the previous evening but denied that he was suicidal. Despite husband's statement, officers feared he posed a risk to himself or others and so called an ambulance. Husband agreed to go to the hospital for a

psychiatric evaluation but only after officers allegedly promised not to confiscate his firearms. After husband was taken away in the ambulance, officers entered the home without a warrant and seized two handguns. *Id*.

Husband later sued the officers claiming they violated his Fourth Amendment rights by the warrantless seizure of both him and his guns. The district court granted summary judgment to the officers and the First Circuit affirmed, justifying the officers' warrantless search and seizures on the grounds that the actions were well within a "community caretaking exception" to the warrant requirement. *Id*. (internal citation omitted). According to the First Circuit, a community caretaking exception excuses officers from obtaining consent, acting in response to exigent circumstances, or having other legal justification for conducting warrantless searches and seizures in homes. *Id*.

A unanimous Supreme Court noted in the opinion that "the Fourth Amendment does not prohibit all unwelcome intrusions 'on private property,'—only 'unreasonable' ones." *Id*. at 3 (internal citation omitted). The warrantless intrusions in this case, the Supreme Court said, were unreasonable.

It should be noted that the First Circuit's reasoning was based on a case involving a warrantless search of an impounded vehicle. *Id*. at 2, 4. In that prior case, the Supreme Court had made distinctions between searches that may be reasonable of vehicles on the public highways versus searches in other contexts such as when the vehicle is "parked adjacent to the dwelling place of the owner." In this case, the Supreme Court made clear that extending exceptions to the warrant rule devised for vehicles on public highways to the context of a person's home is unacceptable. *Id*. at 4.

Several concurring opinions were authored in this case to emphasize that the Court's holding did not diminish the validity of the exigent circumstances doctrine. Of course, as pointed out repeatedly in Justice Kavanaugh's concurrence, "objectively reasonable" bases for police to believe a current, ongoing crises exists must be present to justify warrantless entry into homes. Slip Op. (Kavanaugh, J. concurring) at 3-5.

The bottom line? Do not rely on a "community caretaking exception" to conduct a warrantless entry and search of a person's home.

Lange v. California, 594 U.S. ___ (2021). Fresh Pursuit of Misdemeanor Suspect Does Not Automatically Authorize Warrantless Entry into a Home.

In this case out of California, the Supreme Court, with several concurrences but no dissents, held that the pursuit of a fleeing misdemeanor suspect does not *categorically* qualify as an exigent circumstance. (Justice Kagan, in her opinion for the Court, noted that "[a] great many misdemeanor pursuits involve exigencies allowing warrantless entry. But whether a given one does so turns on the particular facts of the case." Slip Op. at 1.) The Court's opinion resolved a conflict between those courts holding that fresh pursuit of a misdemeanor suspect always constituted exigent circumstances for a warrantless invasion of a home and those, like our own Tenth Circuit, which have held that each case must be assessed on its own facts to determine if a valid exigency existed.

The case at hand involves a California Highway Patrol officer and an obnoxiously noisy driver. The driver was listening to loud music, with his windows down, and was repeatedly honking his horn as he drove down a public street. The CHP officer began tailing the driver and soon initiated his overhead lights as a signal to the driver to pull over. The driver, however, was only about 100 feet from his home at the time the officer turned on his lights and so, rather than stopping, the driver pulled into his driveway and entered his attached garage. The officer followed the driver into the garage and, upon observing signs of intoxication, put the driver through a series of field sobriety tests and then arrested him for misdemeanor DUI.

At trial, the driver argued the evidence obtained as to his intoxication should be suppressed because it was only obtained after the officer made a warrantless entry into his home (the attached garage). The trial court denied his motion and various appeals courts upheld the denial. The California Court of Appeal declared that a misdemeanor suspect "could 'not defeat an arrest which has been set in motion in a public place' by 'retreat[ing] into' a house or other 'private place.'" Slip Op. at 2 (internal citations omitted). Proponents of the flight-means-exception position argued to the Supreme Court that "[t]he fact of flight from the officer . . . is itself enough to justify a warrantless entry." Slip Op. at 5 (internal citation omitted). After a thorough review of previous cases and an analysis of the common law, the Supreme Court determined that "[t]he flight of a suspected misdemeanant does not always justify a warrantless entry into a home" but that "[a]n officer must consider all the circumstances in a pursuit case to determine whether there is a law enforcement emergency." Slip Op. at 16. "On many occasions," the opinion says, "the officer will have good reason to enter—to prevent imminent harms of violence, destruction of evidence, or escape from the home. But when the officer has time to get a warrant, he must do so—even though the misdemeanant fled." *Id*.

This case affirms what we have taught in the legal block of the basic academy for years: the fresh pursuit of a misdemeanor suspect does not give blanket authority to enter a home without a warrant. The case we have used in the basic academy to discuss this issue is *Mascorro v. Billings*, 656 F.3d 1198 (10th Cir. 2011). The Supreme Court noted *Mascorro* in its opinion in this case. Slip Op. at 3 fn 1 and 10. In *Mascorro*, a Murray County Sheriff's deputy forcefully entered a home in the wee hours of the morning after attempting a traffic stop on a juvenile for malfunctioning taillights. You may recall that the deputy pepper-sprayed the juvenile's mother, father, and younger brother, refused medical treatment for the family members, and lead a search of the home that significantly damaged parts of the structure as well as personal property within. In the civil suit that followed, the Tenth Circuit concluded that "[n]o reasonable officer would have thought pursuit of a minor for a mere misdemeanor traffic offense constituted the sort of exigency permitting entry into a home without a warrant." *Mascorro*, 656 F.3d at 1209-10.

U.S. v Frazier, No. 20-4131, ___ F.4th ___ (10th Cir. 2022). "Reasonable Suspicion Is a Low Bar, but It Is Not that Low."

Searches related to traffic stops provide an endless source of litigation and various levels of instruction for peace officers in how various circumstances may support or fail to support reasonable suspicion. In

this case, the Tenth Circuit analyzed the actions of a Utah Highway Patrol trooper during a traffic stop in which a drug dog was called and a significant amount of cocaine was seized. The case involves a motorist traveling westbound on I-15 in the middle-of-nowhere Utah. The trooper observed a driver with out-of-state plates drive past him "going a little fast," as the trooper sat on the side of the freeway. "A little fast" meant the driver was going between 4 and 8 miles an hour faster than the posted speed limit. The driver also, though signaling before making lane changes, did so "for less than the two seconds required under Utah law." Based on the speeding and short signaling, the trooper pulled the driver over. After a quick look into the backseat through the window and a brief visit with the driver, the trooper had a hunch that the driver may be engaged in drug trafficking. He returned to his cruiser where he made multiple attempts to contact a sheriff's deputy with a K9 before he proceeded to address the traffic stop issue.

At trial, the driver moved to suppress the incriminating evidence seized by the trooper. The district judge denied the motion but the Tenth Circuit found the trooper did not have reasonable suspicion to support the extra steps he took—such as contacting the K9 officer—which delayed the traffic stop. In its opinion, the Tenth Circuit went through and dismissed the various facts the district court had found supported the trooper's claim of reasonable suspicion.

To start out, the Tenth Circuit reiterates that according to the Supreme Court, "an officer's authority to seize the occupants of a vehicle ends when 'tasks tied to the traffic infraction are—or reasonably should have been—completed.'" Slip Op. at 8 (quoting *Rodriguez v. United States*, 575 U.S. 348, 354 (2015)). Therefore, the court asserted that "an unlawful seizure occurs [under *Rodriguez*] when an officer (1) diverts from the traffic-based mission of the stop to investigate ordinary criminal conduct, (2) in a way that 'prolongs' (i.e., adds time to) the stop, and (3) the investigative detour is unsupported by any independent reasonable suspicion." Slip Op. at 8.

To support a claim of reasonable suspicion, the trooper alleged several facts, which the Tenth Circuit found unpersuasive. They were:

1. That the driver had a duffle bag in the car. The trooper stated that in his specialized training and experience, drug traffickers often use duffle bags to carry contraband. The court, however, found that the presence of a duffle bag in a vehicle provides only evidence of travel.
2. That the driver only partially opened his window and had air freshener with him. Although the court admitted an overpowering smell of air freshener may support reasonable suspicion, the presence of air freshener that does not appear to have been used cannot. Also, failure to completely roll down a window when the weather is chilly, especially when it was opened wide enough for a conversation and to pass documents back-and-forth, cannot be said to support reasonable suspicion.
3. That the driver answered questions evasively. In this case, the evidence showed the driver had short delays in answering several questions but in each case, the trooper's question encompassed an abrupt change of topic or was asked while the driver was engaged in trying to find information about the car rental agreement using his phone. The minor delays could not be said to demonstrate suspicious activity.

4. That the driver had two IDs. Here the driver had a valid DL from Iowa and a valid ID from Missouri, both of which bore consistent information. The court says such a circumstance, though perhaps unusual, cannot justify reasonable suspicion without more.
5. That the driver could not locate his rental agreement. The court notes that failure to produce a rental agreement may be a good basis for a continued stop while the officer attempts to determine a driver's authority to operate a vehicle, but it cannot be used to justify continued detention for purposes of investigating drug trafficking. In this case, because the trooper "diverted from the stop's initial mission to arrange for a dog sniff rather than to establish [the driver's] authority to drive the vehicle, [the driver's] inability to lay hands on the agreement can play no role in our reasonable suspicion analysis." *Id*. at 17.
6. That the driver was operating a rental vehicle and engaging in cross-country travel. Simply driving a rental vehicle "does not add to reasonable suspicion unless there are specific facts that make the rental relevant or unusual." Id. at 17. Further, cross-country travel is not a basis for reasonable suspicion without a showing that the plans were "implausible" or "inconsistent" with the driver's story. In this case, the driver's trip from the Midwest to California and back, even though short in duration, was not a basis for reasonable suspicion.

In assessing and rejecting the factual bases urged by the trooper and approved by the district court, the Tenth Circuit found each of the alleged facts were "completely innocuous" and noted that "[r]easonable suspicion is a low bar, but it is not that low." *Id*. at 18-19.

CASES—ELEMENTS OF CRIMES

Busby v. State, 2022 OK CR 4. What Constitutes an Outer Door for Purposes of the Burglary Statute?

In this case out of Cleveland County, prosecutors appealed a decision by the preliminary hearing magistrate to grant the defendant's demurrer* to the evidence. The magistrate's ruling was affirmed by the district judge. The issue presented was whether the evidence presented by the State was sufficient to prove the element of breaking an outer door or wall for the crime of burglary in the first degree. 21 O.S. § 1431. Specifically, the court was asked to consider whether forcible entry into a door leading from a garage into a dwelling house constitutes the breaking of an outer door.

As recorded by the Court of Criminal Appeals, the facts are as follows: "[T]he defendant was arguing with the resident of a house in the garage where the large overhead garage door was left open. The resident, who had a relationship with the [defendant], told him not to enter the house, but he ignored her request and opened the door leading from the garage into the dwelling portion of the house. The dwelling was occupied at the time of the entry." *Busby* at ¶ 4.

The Court acknowledged that by statutory definition, the garage is an integral part of the house and that if the garage door is closed and someone forces their way through it then an outer door has been broken for purposes of the burglary statute. *Id*. at ¶ 14. However, the Court took great pains to distinguish the

"overhead garage door" from other "outer doors" of the house. Although if you left your front or back door wide open and some miscreant entered therein there would not be a "breaking" for burglary purposes, leaving a garage door open is an entirely different thing to the Court. After all, the opinion says, overhead garage doors "are vulnerable and are many times left open during the day, and sometimes accidentally during the night." *Id*. at ¶ 21. When this happens, "the garage becomes nothing more than a carport and the door leading from the garage to the interior of the house becomes the outer door . . . [and i]t may be the outer door sufficient to come under the requirements for first degree burglary." *Id*.

TITLE 21 – CRIMES AND PUNISHMENTS (and related provisions)

HB 4373 (effective November 1, 2022) amends burglary statutes.

This bill is aimed directly at the scourge of catalytic converter thefts, but also addresses a few additional things. 21 O.S. § 1435 is amended to expand the third-degree burglary definition from "breaking and entering" into automobiles, trucks, trailers, vessels, etc., but to now include "climbing under" and "using any jack stands or any other item" to raise such a vehicle with the intent to (1) steal any property therein; (2) steal any property attached thereto; or (3) commit any felony. The amended statute defines "property attached thereto" to include but not be limited to "tires, wheels, and catalytic converters." The bill also adds a fine of up to $5,000.00 to the punishment options in 21 O.S. § 1436.

SB 6 (effective March 22, 2022) created the Sergeant Craig Johnson Act to expand the definition of an accessory.

This bill amended the language of 21 O.S. § 173 to expand the definition of accessory as follows: "In the case of murder, a person is accountable under this statute for accessory to murder if the person knew or reasonably should have known that the conduct committed upon the victim could foreseeably result in the death of the victim." As you may recall, Johnson, who served with the Tulsa PD, was shot during a traffic stop in Tulsa early in the morning on June 29, 2020, and died of his injuries the next day. Officer Aurash Zarkeshan was also seriously injured during the incident. You may recall from our 2021 Legal Update another statute named for the fallen peace officer: the Sergeant Craig Johnson Metal Theft Act.

HB 3429 (effective November 1, 2022) updating requirements for "Livestock Offender Registry."

This bill updates 21 O.S. § 1716, which requires certain convicted violators to be listed in the Livestock Offender Registry maintained by the Department of Agriculture, Food, and Forestry. The update authorizes counties, which have an obligation under the statute to submit a certified copy of judgments and sentences to the Ag department, to submit such information electronically.

HB 3070 (effective November 1, 2022) modifies language regarding improper transportation of firearms.

This bill amends 21 O.S. § 2189.13A to remove reference to the Oklahoma Self Defense Act or similar laws from other states. It appears this may be simply an attempt to recognize so-called Constitutional carry. Effective November 1, 2022, the statute authorizes traffic citations for any person transporting a firearm in violation of any law but does not foreclose additional enforcement activity for other violations of law.

HB 3087 (effective November 1, 2022) amends 21 O.S. § 533 regarding officers' duties to receive persons into custody or to fingerprint individuals.

In this bill, the Legislature has added exceptions to peace officer, jailer, or prison contractor duties to receive persons into custody or to fingerprint individuals received into custody. The new language is that "where authorized personnel of the jail have deemed a person medically unfit to be received into custody" obligations to receive or fingerprint such persons are eliminated. The statute, however, does not identify or define who such "authorized personnel" may be or what standards may exist to find someone "medically unfit."

HB 4224 (effective November 1, 2022) amends provisions related to human trafficking and prostitution.

Section 748 of Title 21 is amended by this bill to make clear the affirmative defense of having been a victim of human trafficking at the time of an offense is available in not only criminal prosecutions but also in actions against youthful offenders and delinquent children.

The bill also amends 21 O.S. § 748.2 to provide that a minor who appears to be a victim of human trafficking and in need of immediate protection "shall not be subject to juvenile delinquency proceedings or child-in-need-of-supervision proceedings for prostitution offenses or misdemeanor or nonviolent felony offenses committed as a result of being a victim of human trafficking." Subsection C of 21 O.S. § 1029 is similarly amended to provide that "[n]o child who is a victim of human trafficking shall be subject to juvenile delinquency or criminal proceedings for the offenses described in subsection A of this section [prostitution, lewdness, assignation] which occurred as a result of the child being a victim of human trafficking."

HB 3258 (effective November 1, 2022) closes possible loopholes in sodomy, rape, rape by instrumentation, and lewd acts statutes.

Sodomy, rape, rape by instrumentation, and lewd molestation all have so-called "statutory" versions of the crimes where acts are made criminal based on some specific criteria, like age differences or relationship status. This bill closes an apparent loophole to make criminal acts "committed upon a student at a secondary school who is concurrently enrolled at an institution of higher education by an employee of the institution of higher education of which the student is enrolled." It defines such employees as "faculty, adjunct faculty, instructors, volunteers, or an employee of a business contracting with an institution of higher learning who may exercise, at any time, institutional authority over the victim" but excludes "enrolled student[s] who [are] not more than three (3) years of age or older than the concurrently

enrolled student and who is employed or volunteering, in any capacity, for the institution of higher education." Virtually the same changes are made in 21 O.S. §§ 888 (sodomy), 1111 (rape), 1111.1 (rape by instrumentation), and 1123 (lewd molestation).

Apparently the push for these amendments was spurred on by an alleged instance of a 35-year-old dating a 17-year-old high school student. The official House press release does not mention a specific circumstance.

HB 3171 (effective November 1, 2022) creates new law dealing with drones or UASs (unmanned aircraft systems).

This bill creates a new law at 21 O.S. § 1743 and prohibits drone operators from (1) trespassing onto private property or into airspace within 400 feet above ground level "with the intent to subject anyone to eavesdropping or other surveillance," (2) to install without consent of the landowner a video or audio device, (3) to photograph, record, or observe a person "in any place where the person has a reasonable expectation of privacy," or (4) to land a drone on lands or waters of another without consent.

SB 186 (effective November 1, 2022) relaxes firearms rules in vehicles where felons are passengers.

This bill removes the provisions in several subsections of 21 O.S. § 1283 that previously prohibited a felon from being a passenger in a vehicle in which a firearm was being transported. The statute still prohibits a felon from operating a vehicle in which a firearm is present.

HB 3286 (effective November 1, 2022) makes stalking a felony, increases possible punishment, and amends some definitions.

This bill amends 21 O.S. § 1173 to render stalking a felony and to increase punishment upon conviction to include imprisonment for not more than three (3) years and/or a fine of not more than $5,000.00. Various punishment increases for subsequent convictions are also made in the bill.

"Course of conduct" has been more specifically defined by the amendment. Now the term means "a series of two or more separate acts over a period of time, however short or long, evidencing a continuity of purpose" and also includes a dozen examples of such acts. (A similar list in 22 O.S. § 60.1 is also updated and amended by the bill.)

The bill creates a new section of law at 21 O.S. § 1173.1, which requires a law enforcement agency that receives of complaint of stalking "and finds that such conduct has occurred," to provide a "Stalking Warning Letter" to the accused (unless the victim requests the agency not to do so). Service of the letter is to be "in the same manner as a bench warrant." The bill provides a statutory form for the letter.

21 O.S. § 1176 is also amended to define "crime victim" as having the same meaning as used in 21 O.S. § 142A-1.

TITLE 22 – CRIMINAL PROCEDURE (and related provisions)

HB 3286 (effective November 1, 2022) expands provisions of the Protection from Domestic Abuse Act to apply to "any adult victim of a crime" and adds several paragraphs of information that must be included on an ex parte or final protective order.

This is the same bill that made stalking a felony as described under the Title 21 section of this update. In addition to the amendments to sections in Title 21, the bill amends sections 60.1, 60.2, 60.4, and 60.11 in Title 22.

HB 4374 (effective May 11, 2022) the "Stephen Bernius Memorial Act" expanding definition of "family or household members" for protective order purposes to include non-relatives.

This bill adds "persons not related by blood or marriage living in the same household" to the definition of family and household members under 22 O.S. § 60.1. "Living in the same household" is also defined by the bill to mean "a. persons who regularly reside in the same single-dwelling unit, b. persons who resided in the same single-dwelling unit within the past year, or c. persons who have individual lease agreements whereby each person has his or her own private bedroom and shares the common areas."

SB 1569 (effective November 1, 2022) address confidentiality for victims of certain crimes.

This bill adds human trafficking and child abduction to the list of crimes in 22 O.S. § 60.14 for which the Legislature finds victims should be able to keep their residential addresses confidential.

SB 3316 (effective November 1, 2022) providing for "automatic expungements" in certain circumstances.

Although this bill becomes effective November 1, 2022, the automatic expungement provisions don't become effective until three years after that, or November 1, 2025, and then are subject to the availability of funds. However, beginning November 1, 2025, assuming funding exists, "individuals with clean slate eligible cases shall be eligible to have their criminal records sealed automatically." "Clean slate eligible cases" are cases "where each charge within the case is pursuant to paragraph 1, 2, 3, 5, 6, 7, 8, 10, 11, 14 or 15 of subsection A of [22 O.S. § 18]." 22 O.S. § 19 is also amended by the bill to describe the process of the automatic expungements.

HB 3024 (effective November 1, 2022) adding category of individuals who can seek expungements of criminal records.

This is another bill affecting 22 O.S. § 18. It adds the following category of persons eligible to seek expungements: "The person was charged with not more than two felony offenses and the charges were dismissed following the successful completion of a deferred judgment or delayed sentence, none of which were felony offenses listed in Section 13.1 of Title 21 of the Oklahoma Statutes or would require the person to register pursuant to the provisions of the Sex Offenders Registration Act, no felony or misdemeanor charges are pending against the person, and at least ten (10) years have passed since the charges were dismissed[.]"

HB 3270 (effective November 1, 2022) addressing how to determine if a person released from incarceration has the ability to pay fines, fees, costs, and assessments.

This bill amends 22 O.S. § 983b to make clear that monies received by a formerly incarcerated person from a federal or state government needs-based assistance program cannot be counted as personal income when determining the person's ability to pay court fines, fees, costs, and assessments. The bill also amends 22 O.S. § 815 limiting defendants' responsibilities to pay costs of actions that are dismissed.

HB 4194 (effective November 1, 2022) modifies the bail statute.

This bill adds a new subsection to 22 O.S. § 1101 which provides that "[i]f the person was arrested for a crime provided for in the Protection from Domestic Abuse Act or a violent crime provided for in Section 571 of Title 57 of the Oklahoma Statutes, the court shall be responsible for assessing prior patterns of abuse and shall present written finding on the bail amount."

SB 974 (effective November 1, 2022) makes changes to statutes of limitations and discovery of certain crimes.

This bill amends 22 O.S. § 152 to define "discovery of the crime" as "the date that a physical or sexually related crime involving a victim eighteen (18) years of age or older is reported to a law enforcement agency." In this context, prosecutions of certain crimes involving adult victims must be commenced within 12 years of such "discovery."

The bill also amends Section 152 to prohibit basing a prosecution "upon the memory of the victim that has been recovered through psychotherapy unless there is some evidence independent of such repressed memory." It also adds a provision making it a felony to "knowingly and willfully" make a false claim or makes a claim the person knows lacks factual foundation.

Finally, the bill imposes a three-year statute of limitations on prosecutions for human trafficking under 21 O.S. § 748. The limitation is measured from the date of "discovery of the crime" here defined as "the date upon which the crime is reported to a law enforcement agency."

HB 3053 (effective November 1, 2022) modifies drug court program.

This bill amends 22 O.S. § 471.9 to authorize a drug court to either dismiss the criminal case against the offender (which previously had been the only option) or to defer the sentence for a period not to exceed

two years (the new option). This change applies only in circumstances when the offense was a first felony offense. The other provisions of the statute remain unchanged.

SB 1548 (effective November 1, 2022) also modifies the drug court program.

This bill modifies several provisions of the drug court program, including **eliminating the prohibition on violent offenders** participating in drug court, **authorizing juvenile drug courts**, and moving administration of the drug court from judges to drug court coordinators (judges will still preside over the judicial process and hold proceedings associated with drug court). Modifications were made to 22 O.S. §§ 471.1, 471.2, 471.3, 471.4, 471.6, 471.8, and 471.10.

SB 1738 (effective November 1, 2022) adds new law regarding mental competency and execution.

This bill adds a new section of law at 22 O.S. § 1005.1 to provide that "[t]here shall be a presumption that a person who has received a judgment of death is mentally competent to be executed" and then provides the mechanisms by which one may argue they are *not* mentally competent to be executed.

TITLE 12 – CIVIL PROCEDURE

SB 976 (effective May 19, 2022) authorizes sheriff sales to take place through online auction marketplaces or other online methods.

This bill significantly modernizes Oklahoma's sheriff sales provisions by authorizing sales to take place online. 12 O.S. §§ 757, 765, 766, and 769 are amended to outline the authority and procedure for conducting sheriff sales online.

TITLE 10A – CHILDREN AND JUVENILE CODE

SB 217 (effective November 1, 2022) significant revamping of the Youthful Offender Act.

This bill amends several sections of the Youthful Offender Act and creates several new sections of the Act. Those sections affected by the bill include 10A O.S. §§ 2-5-201, 2-5-202, 2-5-203, 2-5-204, 2-5-205, 2-5-212, and 2-5-213. New law is created at 10A O.S. §§ 2-5-206A, 2-5-207A, 2-5-208A, 2-5-209A, and 2-5-210A. Several sections will also be repealed effective November 1, 2022, including current Sections 2-5-206, 2-5-207, 2-5-208, 2-5-209, and 2-5-210. The bill provides new definitions and procedures.

HB 3315 (effective November 1, 2022) removes fines from minor tobacco use prohibitions and replaces them with educational and cessation programs.

This bill removes fines for underage tobacco use and instead replaces them with requirements for violators to complete educational or tobacco use cessation programs approved by OSDH. The amendment to 10A O.S. § 2-8-224 removes the authority of towns and cities to enact and municipal peace officers to enforce municipal ordinances prohibiting and penalizing underage tobacco usage.

TITLE 11 – CITIES AND TOWNS

HB 1058 (effective July 1, 2022) creating the Municipal Audit Reform Act of 2022.

This bill amends 11 O.S. §§ 17-105 and 17-107, creates new law at 11 O.S. § 17-107A, and repeals 11 O.S. § 17-108. Amends minimum revenue requirements upward such that the Act applies only to municipalities with $50,000.00 or more in total revenue during a fiscal year and makes other changes to audit procedures and requirements.

TITLE 19 – COUNTIES

HB 3026 (effective November 1, 2022) increases fees that sheriffs can charge for fingerprinting.

This bill amends 19 O.S. § 514.3 to increase the amount a sheriff may charge per card for fingerprinting individuals from $5.00 to $15.00. The amendment leaves in place the provision that the charge is not applicable to fingerprinting individuals pursuant to the Oklahoma Self-Defense Act.

HB 2233 (effective May 26, 2022) authorizes county commissioners to expend CARES money.

This bill amends 19 O.S. § 339 to authorize county commissioners to expend CARES money and makes clear that a county's receipt of CARES funds will not be considered a supplemental appropriation and will be exempt from the requirements of 19 O.S. § 1420 regarding supplemental appropriations and budget amendments.

SB 1248 (effective November 1, 2022) authorizes county commissioners to do direct deposit for employee paychecks.

This bill creates new law at 19 O.S. § 180.87 and authorizes county commissioners to establish a direct deposit payment system to pay county employees.

HB 3925 (effective May 26, 2022) establishing a court cost compliance program.

This bill amends 19 O.S. §§ 514.4 and 514.5, effective July 1, 2023, to establish a court cost compliance program which authorizes county sheriffs to contract with court cost compliance liaisons to assist with collecting fines, costs, fees, and assessments in certain cases. The bill also creates new law at 20 O.S. § 3007 authorizing a Cost Administration Implementation Committee within the Administrative Office of

the Courts. Two county sheriffs selected by the Oklahoma Sheriffs' Association are slated to sit on the committee. The bill also amends 22 O.S. §§ 209 and 983, both of which take effect July 1, 2023.

TITLE 37A – INTOXICATING LIQUORS, ALCOHOLIC BEVERAGES

SB 169 (effective November 1, 2022) makes revisions to "cocktails-to-go" laws.

This bill amends 37A O.S. §§ 7-102 and 7-103 with regard to the types of lids necessary and who can place such lids on cocktails-to-go and similar drinks.

SB 1749 (effective April 22, 2022) authorizes packaged beer sales at golf courses and country clubs.

This bill authorizes golf courses and country clubs (as defined by the North American Industry Classification System) which hold mixed beverage licenses to sell beer "in sealed original packages for on-premises consumption." The bill also makes clear that sales of more than two original packages to one patron at a time for on-premises consumption will not be considered "an unlawful inducement to stimulate consumption of alcoholic beverages." Patrons are also allowed to remove sealed original packages from the licensed premises. Amendments to 37A O.S. §§ 2-110 and 2-128 are included in the bill.

The bill also included an emergency clause whereby the legislature found its passage was immediately necessary to preserve the public peace, health, or safety, paving the way for it to take effect as soon as it was approved.

SB 1784 (effective April 25, 2022) authorizes employees of beer distributors or wine and spirits wholesalers who are at least 18 years old to enter designated bar or lounge areas for business purposes.

This bill amends several sections of Title 37A, particularly Sections 6-103, 6-105, and 6-114, to authorize employees of beer distributors or wine and spirit wholesalers who are at least 18 years old but not yet 21 years old to enter into designated bar areas for purposes of delivering or merchandising product.

TITLE 47 – MOTOR VEHICLES

SB 366 (effective November 1, 2022) makes several changes to various impaired driving laws.

This bill amends 47 O.S. §§ 6-205.1, 6-211, 6-212.2, 6-212.3, 6-212.5, 753, 754, and repeals Sections 6-212.6, 754.1, 754.2, and 755. One of the many changes is to transfer the impaired driver accountability program from DPS to the Board of Tests for Alcohol and Drug Influence and to modify the minimum rules for ignition interlock devices.

SB 1116 (effective November 1, 2022) amends 47 O.S. § 6-205.2(E) to add human trafficking as an offense that can result in commercial driver license revocation.

This bill adds "a felony conviction of human trafficking while operating a commercial motor vehicle" to the list of convictions that will disqualify a person "from operating a Class A, B or C commercial motor vehicle for life[.]"

SB 1589 (effective November 1, 2022) makes some adjustments to the Oklahoma Law Enforcement Retirement System.

This bill amends a couple of provisions related to OLERS in 47 O.S. § 2-305.2, dealing with the assumed interest rate in subsection E, and 47 O.S. § 2-308.2, where the amendment includes expected administrative expenses in the calculation for employer contributions.

HB 4100 (effective November 1, 2022) Operation Work Zone Awareness.

This bill creates new law at 47 O.S. § 11-1304 to establish "Operation Work Zone Awareness." This is an educational program which can be used to avoid having to pay the fine for a qualifying ticket. Violations that qualify an offender to participate in the program include speeding, distracted driving, failure to move over, failure to obey a flagger, and failure to obey traffic control devices. An offender may only take advantage of the program one time. Impaired driving offenses are specifically excluded from the program. Participants will have to pay a $75.00 fee.

HB 3970 (effective November 1, 2022) separates the Oklahoma Purple Heart award into Blue Heart (for law enforcement) and Red Heart (for firefighters) awards.

As noted above, this bill eliminates the state Purple Heart award and replaces it with two separate but similar awards, the Oklahoma Blue Heart award and the Oklahoma Red Heart award. The awards, which are authorized by 47 O.S. § 2-108.5, are bestowed for "serious line of duty injuries." The Blue Heart is available to law enforcement and public safety members employed by municipal, county, state and employees of federal agencies working in Oklahoma. The Red Heart is reserved for municipal firefighters employed by cities and towns.

HB 4008 (effective July 1, 2022) transfers Size and Weights Permits Division from DPS to ODOT.

This bill formally transfers "[a]ll the powers, duties, functions, records, employees, property, matters pending, funds, and responsibilities of the Size and Weights Permits Division" from DPS to ODOT. This is done in a wholescale amendment to 47 O.S. § 2-106.1. Numerous other sections of statute are also amended to reflect the adjustment.

HB 3179 (effective November 1, 2022) license plates for military surplus vehicles.

This bill creates new law at 47 O.S. §§ 1-133.1a and 1-122.1b to define military surplus vehicles and military surplus vehicle collections, respectively. It also amends 47 O.S. § 1113 to place licensing and registration requirements on such vehicles if they are to be operated on streets and highways within the state.

HB 3674 (effective November 1, 2022) the "Olivia's Not a Jerk Law."*

Representative Max Wolfley (R-Dist. 95) is the principal author of the bill. According to his Senate co-author, Shane Jett (R-Dist. 17), Rep. Wolfley's bill came about to fix a calendric flaw in the previous version of 47 O.S. § 1151. The earlier version provided that although it was illegal to operate a vehicle whose tag was out of date, "[n]o citation may be issued by any state, county or municipal law enforcement officer during the thirty-day period immediately succeeding the last day of the month during which a vehicle registration should have been renewed and a current license plate decal obtained and displayed on the license plate of the vehicle." (See subsection A(5)). So, if your tag expired in January then you had until March 2 (28 days in February plus 2 days in March for a total of 30 days) to renew without subjecting yourself to the danger of a ticket (this calculation only works in non-leap-years, of course, because in leap-years the math would only allow a January expirer to drive with an out-of-date tag until March 1). On the other hand, if your tag expired in February you would only have until March 30th to renew without possibility of a citation even though there was still one more day left in the month because the statute clearly stated a 30-day period rather than a one-month period. Thus, for every tag that expired in a month that immediately preceded a 31-day month, you would not get the full next month to renew because you only got 30 days. This then put some motorists into a seemingly unfair ticket zone because what if you delayed your registration renewal for a month following the month you should have registered but because the following month was 31 days long you were in danger of a ticket on the 31st of the month instead of on the first of the next month? "How would officers or courts handle such a conundrum?," we understand Rep. Wolfley to have asked some individuals who were in the know. "Well," said they, "it would depend on if the person was a jerk or not," implying that non-jerks would be given the benefit of the extra day while jerks would be held to a strict 30-day standard. The version of Section 1151 that goes into effect in November 2022 now gives the motoring public a "one-month" period immediately succeeding the last day, etc., etc.

**You can watch Rep. Wolfley give a brief explanation of the bill's title here. After clicking the link, you will need to go to the calendar on the left side of the panel and click on March 24, 2022. Then, to the right of the calendar will appear an hourly agenda for the day with a band in the agenda showing the House's morning session that day at 10:00 am. If you click that band, it will bring up the video for the whole session. Then, if you will click on the agenda tab at the bottom of the video panel and scroll down to 11:54:05, click that link, then press play on the video panel, the video of the House discussion of the bill will play for you. (I know it is a lot of steps, but it will let you see the sausage being made as they say.)*

SB 1541 (effective November 1, 2022) makes new law regarding fully autonomous or automated vehicles.

This bill grants authority for certain autonomous or automated vehicles to operate on Oklahoma public roads without a human driver in certain circumstances. It creates new law in Title 47 under Sections 1703, 1704, 1705, 1706, 1707, 1708, 1709, 1710, and 1711, and amends Sections 6-102, 1701, and 1702 in Title 47.

The new sections of law create minimum safety standards, require operators to file with DPS a "law enforcement interaction plan" outlining how law enforcement should communicate with the fleet support specialist and how to safely remove and tow a vehicle from the roadway, impose financial responsibility obligations in the minimum amount of $1,000,000.00, outline accident reporting and reaction requirements, list licensing and titling obligations, and mandate many other standards.

Although it is probably good that Oklahoma is codifying standards applicable to autonomous vehicles, the days of true self-driving vehicles may be further away than some expected. Recent articles in the *Washington Post* and the Oxford University Press blog point out some of the continued challenges to fully autonomous vehicles.

HB 3421 (effective July 1, 2022) transfers authority and responsibility for REAL ID compliant and non-compliant driver license and identification cards from DPS to Service Oklahoma.

This bill amends 47 O.S. § 6-101 to transfer authority and responsibility for the issuance of driver licenses and ID cards from DPS to Service Oklahoma. Authorized tag agents will be able to issue such documents too. A related bill, **HB 3419**, which was effective May 19, 2022, created Service Oklahoma as a division of OMES and transfers the "applicable powers, duties, and responsibilities" of DPS's driver license services bureau to Service Oklahoma by November 1, 2022. Applicable powers, duties, and responsibilities of the Tax Commission's motor services division are also transferred to Service Oklahoma by January 1, 2023. HB 3419 is a huge bill at some 477 pages long. Lots and lots of changes including new provisions of law and amendments to existing statutes.

SB 1430 (effective November 1, 2022) authorizes municipalities to regulate some motorized scooter matters.

SB 1430 changed the definition of "motorized scooter" found in 47 O.S. § 1-133.3 to limit the definition to vehicles that have a maximum design speed of 35 miles per hour on level ground, whether powered by a combustion engine or an electrical source. Combustion engines are limited to piston or rotor displacement of not more than fifty cubic centimeters (50 cc). Regardless of power source, municipal governments are now authorized to set maximum speed requirements by local ordinance.

The statute also now sets out minimum standards but authorizes municipalities to be more restrictive by ordinance.

SB 338 (effective July 1, 2022) amends 47 O.S. § 2-105, including the standards for Oklahoma Highway Patrol commissioned officers.

This bill amends Section 2-105, particularly some of the minimum qualification standards for OHP commissioned officers. It also removes a previous requirement that the DPS Commissioner confer with the Director of OMES regarding minimum standards for appointees.

SB 1387 (effective November 1, 2022) provides for several new license plate designs.

This bill amends 47 O.S. § 1135.5 to authorize several new license plate designs including a Diabetes Awareness plate, an Alliance of Mental Health Providers of Oklahoma plate, and a Stillwater Public Schools plate. Plate designs appear in the specialty plates catalog, although as of this writing these new plate designs have not yet been added. As an aside, you can find the list of the rejected personalized plate requests from 2021 here.

HB 4150 (effective November 1, 2022) amends 47 O.S. § 11-701 and § 11-702 to include "other on-track equipment" in requirements for stopping at railroad crossings.

Section 11-701 describes general safety requirements when drivers of vehicles approach railroad crossings and Section 11-702 describes safety requirements for bus drivers when approaching railroad crossings. The amendments add "other on-track equipment" every place the term "railroad train" appears in the statutes.

HB 4471 (effective November 1, 2022) imposes requirement for DPS to provide written reports on OHP Trooper academies.

HB 4471 amends 47 O.S. § 2-146 to add a new paragraph requiring a report regarding all OHP academies "conducted in the then current and preceding state fiscal year" be provided to the Speaker of the House, President Pro Tem of the Senate, and chairs of the House and Senate appropriations committees on or before December 1 of each year.

HB 3501 (effective May 27, 2022) requires DPS to accept and act upon reports of conviction from qualified courts of any federally recognized Indian tribe in the same manner it acts upon reports from Oklahoma state or municipal courts.

This bill created a new section of law at 47 O.S. § 6-201.2 requiring DPS to "recognize and act upon a report of conviction in a qualified court of any federally recognized Indian tribe within the geographical boundaries of this state or a court of the United States in the same manner it acts upon any report of conviction from an Oklahoma state or municipal court." It amends 47 O.S. § 6-205.2 to include definitions of "tribe" and "qualified court." Tribe is defined as "a federally recognized Indian tribe within the geographic boundaries of this state" and qualified court is defined as "those tribal court systems that have adopted the Tribal Law and Order Act of 2010."

This bill was initially vetoed by Governor Stitt but the House and Senate overwhelmingly voted to override the veto.

HB 2065 (effective July 1, 2022) amends 47 O.S. § 2-305 to provide exceptions to some grandfathering provisions in the OLERS program.

This bill addresses provisions in the Oklahoma Law Enforcement Retirement System or OLERS. The amendments to Section 2-305 provide exceptions for "members who died in the performance of their duties" to limitations on benefits for individuals who started with the system after certain dates. See paragraphs C(2) and D(2).

SB 942 (effective July 1, 2022) amends provisions related to restricted CDLs.

This bill amends 47 O.S. § 6-111 with regard to requirements for applicants for restricted commercial driver licenses. Such licenses are available for individuals involved in specific farm-related service industries including (1) farm retail outlets and suppliers, (2) agri-chemical businesses, (3) custom harvesters, and (4) livestock feeders.

TITLE 57 – PRISONS AND REFORMATORIES (and related provisions)

HB 3918 (effective November 1, 2022) adds additional notice requirements to commutation procedures.

This bill adds to 57 O.S. § 332.2 additional notice requirements when a commutation is granted or denied. One of the new requirements is that the district attorney in the district where the sentence was originally obtained has to ensure that all victims or representatives of victims are given notice regarding the commutation.

SB 1099 (effective November 1, 2022) affects correctional peace officers.

This bill amends 57 O.S. § 510 to provide that ODOC employees who have been commissioned as correctional peace officers but voluntarily move into a position that does not require correctional peace officer status may be allowed to maintain such status by the director.

SB 1456 (effective November 1, 2022) authorizes CLEET to evaluate and approve ODOC to conduct its own basic peace officer academy.

This bill amends 70 O.S. § 3311.5 to authorize CLEET to establish rules and criteria to approve ODOC to conduct its own basic peace officer training academy. Such academies will be for officers who must be CLEET-certified, such as probation and parole officers, rather than for the correctional peace officers, who can be certified by the Director of DOC.

TITLE 59 – ALLIED PROFESSIONS

SB 1370 (effective November 1, 2022) adds curricular requirements for private security and private investigator training.

This bill amends 59 O.S. § 1750.3 to add a requirement that private security and private investigator basic training include "recognizing and managing a person appearing to require mental health treatment or services, crisis intervention, and techniques to assist with de-escalating interactions between security guards, private investigators, and the public." The bill, however, maintains the requirement that basic unarmed security guard training shall not exceed 40 hours.

SB 80 (effective November 1, 2022) provides automatic conditional unarmed security guard licensure to applicants who work for a licensed security agency.

This bill amends 59 O.S. § 1750.4 to add a provision that beginning November 1, 2022, any person who is employed with a licensed security agency and who has submitted a complete application for licensure with CLEET may work for up to 45 days while waiting for a decision on the license. We anticipate the perceived need for this change will be moot by the time it takes effect because we launched a new online application portal in July 2022, which should reduce the time between completing an application and having it reviewed and acted upon.

SB 1706 (effective May 2, 2022) provides guidelines for electric security fencing and preempts local ordinances if the security fencing complies with the bill's guidelines.

This bill amends 59 O.S. §§ 1800.2 and 1800.18 and creates new law at 59 O.S. § 1800.19. It defines "battery-charged security fence" to mean an alarm system and related components attached to a system including a fence, a battery-operated energizer "which is intended to periodically deliver voltage impulses to the fence," and a battery-charging device. The bill imposes guidelines for such fencing in Section 1800.19 including limiting the voltage on the battery and requiring a non-electric perimeter fence or wall surround the electrified fence. Municipalities and counties are prohibited from imposing any ordinance or regulation regarding such fencing so long as the fencing complies with the guidelines.

SB 1691 (effective November 1, 2022) significantly changes the ways state agencies can use criminal histories of applicants when determining eligibility for licenses.

This bill makes some pretty significant changes to the way state agencies can use criminal histories to determine an applicant's eligibility for a license and imposes significant obligations on state agencies to publish data regarding criminal history and licensing. The changes will be found in 59 O.S. § 4000.1. CLEET, the bail bonds division of the Oklahoma Insurance Department, and the State Board of Education were specifically exempted from the provisions of the bill.

TITLE 63 – PUBLIC HEALTH AND SAFETY

MEDICAL MARIJUANA

SB 1543 (effective November 1, 2022) moves the Oklahoma Medical Marijuana Authority from being a "regulatory office" under the Oklahoma State Department of Health and makes it a stand-alone agency.

This bill takes the OMMA out of the control of the OSDH and makes it a stand-alone agency. It amends lots of statutory provisions to give effect to this change.

SB 1367 (effective November 1, 2022) recognizes the OMMA as a stand-alone agency and increases penalties for violations of medical marijuana provisions.

This bill amends 63 O.S. § 427.6 increasing the penalties for many violations of medical marijuana provisions. It also recognizes the OMMA as a stand-alone agency.

SB 1543 (effective November 1, 2022) further recognizes OMMA as a stand-alone agency and specifically authorizes peace officer investigators.

This bill amends many sections in Title 63 to recognize the OMMA as a stand-alone agency and to remove the OSDH from such sections. It specifically amends Section 427.4 to authorize the OMMA to hire and commission peace officer investigators.

HB 3019 (effective November 1, 2022) makes some changes to medical marijuana packaging and labeling provisions.

This bill amends 63 O.S. §§ 427.2 and 427.18 regarding packaging and labeling. Some of the changes include requirements for a warning to appear on container labels stating "for use by licensed medical marijuana patients only" and "keep out of reach of children" and requiring "exit packages" be used at the point of sale and transfer of any medical marijuana products to licensed patients and/or caregivers. "Exit packages" are defined by the amended statute as "an opaque bag that is provided at the point of sale in which pre-packaged medical marijuana is placed."

HB 3208 (effective August 26, 2022) authorizes the OMMA to impose a moratorium on processing and issuing new medical marijuana business licenses.

This bill amends 63 O.S. § 427.3 to grant the OMMA the power to "declare and establish a moratorium on processing and issuing new medical marijuana business licenses . . . for an amount of time the Authority deems necessary." The bill also creates new law at 63 O.S. § 427.14b which mandates a moratorium on processing and issuing new medical marijuana business licenses beginning August 1, 2022, and ending August 1, 2024, although the bill authorizes the OMMA Director to terminate the moratorium early under certain circumstances. The moratorium is not to apply to renewal applications.

HB 2179 (effective June 1, 2023) revamps licensing fees for commercial medical marijuana grower, processer, and dispensary licensees and provides clean-up language in various sections.

This bill amends 63 O.S. § 427.14 to totally restructure licensing fees for commercial medical marijuana business licenses. Previously, all medical marijuana business licenses carried a $2,500.00 application fee. Now fees are tied to size and production and so inside grower fees run from $2,500.00 for up to 10,000 square feet of estimated canopy harvest to $50,000.00 for a 100,000 square foot canopy; outdoor grower fees are now $2,500.00 for up to 2 ½ acres to $50,000.00 for up to 50 acres and an additional $250.00 per additional acre; processor license fees run from $2,500.00 for a business with up to 10,000 pounds of biomass or up to 100 liters of cannabis concentrate to $20,000.00 for a business processing more than 300,001 pounds of biomass or 1,001 liters of cannabis concentrate; dispensary licenses will range from $2,500.00 to not more than $10,000.00 and will be calculated based on 10% of the sum of 12 calendar months of the combined annual state sales tax and state excise tax of the dispensary; medical marijuana testing laboratories will have an annual licensing fee of $20,000.00.

The bill also amends Sections 421, 422, and 423 mostly with clean-up language related to the transition of the OMMA from OSDH oversight to stand-alone status.

SB 1737 (effective November 1, 2022) imposes requirement for outdoor medical marijuana production facilities to register with the Oklahoma Department of Agriculture, Food, and Forestry.

This bill amends 63 O.S. § 422 to require outdoor medical marijuana production facilities to register with the state agriculture department as an "environmentally sensitive crop owner." Such registration is designed to provide notice to pesticide applicators in an effort to minimize the dangers of damaging pesticide drift. The bill also amends 63 O.S. § 427.21 to require specified signage be posted at the site of commercial grow operations. The signs must include the business name, physical address of the licensed business, phone number of the licensed business, and the medical marijuana business license number.

HB 3530 (effective July 1, 2022) creates "County Sheriff Public Safety Grant Revolving Fund."

This bill creates new law at 63 O.S. § 427.3a establishing the "County Sheriff Public Safety Grant Revolving Fund" for the Oklahoma Medical Marijuana Authority. Moneys placed into the fund are to be used to "establish[ ] programs and provid[e] funding to support county sheriffs to enforce the requirements of state law with respect to the commercial growth of medical marijuana or other related business activity for which a license is required[.]"

SB 1511 (effective March 30, 2022) imposes restrictions on the location of commercial medical marijuana growers.

This bill amends 63 O.S. § 425 to impose restrictions on the location of a commercial medical marijuana grow operation. Essentially, it requires such operations to be located more than 1,000 feet away from a public or private school. It also provides grandfather provisions for businesses that preexisted the amendment.

SB 1704 (effective November 1, 2022) authorizes OMMA to revoke licenses and requires business licensees to hire credentialed employees.

This bill amends 63 O.S. § 427.6 to authorize the OMMA to revoke licenses under certain circumstances. It also amends 63 O.S. § 427.14 and creates 63 O.S. § 427.14a to require employees of medical marijuana business licensees to be credentialed to work in such business. The credentialing requirement goes into effect January 1, 2024.

HB 3929 (effective May 26, 2022) provides for the OMMA to develop standards and requirements for a licensee to achieve "process validation" by January 1, 2024.

This bill amends 63 O.S. § 427.17 to provide guidelines for the OMMA in establishing "process validation" standards and requirements and related matters. Under the amended statute, "[p]rocess validation shall be voluntary, and no licensee shall be required to validate their process."

HB 3971 (effective January 1, 2024) creates new law authorizing OMMA to use "secret shoppers" to obtain product from licensed dispensaries for compliance testing.

This bill creates new law that will go into effect January 1, 2024. The law is to be codified at 63 O.S. § 427.25. It establishes a "secret shopper" program by which the OMMA can obtain samples of product from licensed dispensaries without identifying the purchaser as representing the OMMA. Such samples of product will be submitted for compliance testing. The law includes safeguards, including mandating that one sample is to be kept in reserve for retesting should a discrepancy arise between testing laboratories.

OTHER PUBLIC HEALTH AND SAFETY

SB 1152 (effective November 1, 2022) adds two new substances to Schedule I.

This bill amends 63 O.S. § 2-204 to add mentonitazene, flualprazolam, and flubromazolam to the list of Schedule I controlled substances.

HB 3065 (effective November 1, 2022) authorizes retired OBNDD agents to purchase the shotgun and/or rifle issued to them immediately prior to retirement.

Oklahoma Bureau of Narcotics and Dangerous Drugs (OBNDD) commissioned employees were previously authorized to keep their sidearm upon retirement pursuant to 63 O.S. § 2-103. This bill amends

Section 2-103 to authorize such agents to purchase the shotgun and/or rifle they were issued while on active duty. The law sets standards for determining the value of the firearms and directing where proceeds from such sales should be deposited.

HB 3469 (effective November 1, 2022) codifies a parent's right to view and hold a deceased child's body before custody is transferred to the medical examiner.

This bill amends 63 O.S. § 944 to codify a parent's right to view and hold a deceased child's body before a medical examiner takes custody of the body. The right is limited by the amendments such that a parent must have permission from a district judge or the medical examiner to view or hold the child's body once the body is in the medical examiner's custody. Further, when the child's body is subject to an investigation under 63 O.S. § 938 (violent deaths, suspicious deaths, deaths by disease with public health concerns, unattended deaths related to fatal illnesses, medically unexpected deaths occurring during therapeutic procedures, deaths of detained persons, and deaths where body may be made unavailable for pathological study) the viewing must be supervised. One of the statutory supervisors of such viewing/holding is a peace officer. Other guidelines are also codified in the statute.

HB 3278 (effective November 1, 2022) Oklahoma 9-1-1 Authority.

This bill amends several sections in Title 63 relative to the Oklahoma 9-1-1 Authority and repeals 63 O.S. § 2818.4. Most of the amendments appear to be simple language changes but there is the addition of the definition of "public safety telecommunicator" in 63 O.S. § 2862.

SB 1123 (effective November 1, 2022) providing responding peace officers certain authority to allow the removal of bodies.

This bill amends 63 O.S. § 940 to add the "responding law enforcement officer" as a person who can authorize "the removal of a body when the removal is determined to be in the public interest and conditions at the scene are adequately documented and preserved by photographs and measurements."

HB 3193 (effective November 1, 2022) amends provisions related to birth certificates of children born to unwed parents.

This bill amends 63 O.S. § 1-311, specifically paragraph D(2). When the law becomes effective, the father's name will be entered on a birth certificate of a child born to an unwed mother only when (1) a determination of paternity has been made by DHS or a court of competent jurisdiction (currently the standard) or (2) when mother and father have "agreed as to the biological paternity of the child" and signed an acknowledgment of paternity (previously parents could sign an acknowledgment but the language in quotes above is new). The amendment also contains this statement, describing the effect of listing the father on the birth certificate: "This shall give the mother and father equal rights and obligations to the child. A child whose parentage has been determined as set forth shall be treated as a child of parents who were married at the time of the birth."

TITLE 74 – STATE GOVERNMENT (and related provisions)

SB 1565 (effective November 1, 2022) gives the AG authority to cross-deputize local officers.

This bill amends 74 O.S. § 18b to add authority for the Attorney General to cross-deputize municipal police officers and sheriff's deputies. The stated purpose is the "combine city, county, and state law enforcement efforts and to encourage cooperation between city, county, and state law enforcement officials." Liability for such local officers when acting under the cross-deputation agreement remains with the employer of the officer under the statute.

SB 1613 (effective August 26, 2022) creates a mental wellness division at DPS.

This bill creates new law at 74 O.S. §§ 9101, 9102, and 9103 to establish and maintain a mental wellness division under the direction of the Department of Public Safety. The law authorizes the establishment of a non-for-profit foundation to raise funds to help support the effort. The division is supposed to be able to provide assistance to any Oklahoma officer and his or her family members, but it doesn't appear any details have been released at the time of this writing. Here is a media report on the bill.

SB 488 (effective August 26, 2022) reorganizes Oklahoma's Homeland Security Office.

This bill amends 74 O.S. §§ 51.1, 51.1a, 51.2, 51.2a, 51.2b, 51.2c, 51.2d, and 51.3 to make several changes to the organization of the Homeland Security Office.

SB 924 (effective November 1, 2022) creating new law surrounding "state data."

This bill creates new law at 62 O.S. § 34.210 to govern "state data," which is defined as "all data files hosted, procured, owned, processed, secured, stored, or created by this state or its state agencies, while in the course of state business . . . ." Under the law, provisions classifying and restricting data will continue to govern disclosure and the Chief Information Officer of Oklahoma is authorized to establish standards and criteria for the sharing of data between state agencies.

SB 1163 (effective November 1, 2022) multidisciplinary team information.

This bill authorizes multidisciplinary teams for elderly and vulnerable adult abuse cases similar to the multidisciplinary teams for child neglect and abuse cases. See new law at 43 O.S. § 10-115. The bill also ensures that all multidisciplinary teams are excluded from open meeting requirements (25 O.S. § 304) and their records are confidential under the open records act (51 O.S. § 24A.32).

SB 970 (effective November 1, 2022) revises definition of "record" to exclude some personal information contained in government documents and makes some other changes to the Open Records Act.

This bill amends several sections of the Open Records Act. It amends 51 O.S. § 24A.3 to exclude portions of government documents that contain a "personal address, personal phone number, personal electronic mail address or other contact information" from disclosure requirements. The amendment makes clear that "lists of persons licensed, the existence of a license of a person, or a business or commercial address, or other business or commercial information" that are otherwise disclosable remain public records subject to disclosure.

This bill also amends 51 O.S. § 24A.7 to provide that disclosure of personnel records lies within "the sole discretion of a public body" and 51 O.S. § 24A.10 to require public utility providers to redact personal email addresses and names or any other identifiers of the occupants of any residential structure from public records before releasing them. Other information that must be redacted was previously in the statute and continues to be effective after the amendment.

SB 743 (effective November 1, 2022) makes some changes to various public pension systems.

This bill makes several revisions to public pension system statutes. Of particular interest to municipal law enforcement officers would be amendments to 11 O.S. §§ 50-101 and 50-115. In Section 50-101, the definition of "permanent in-line disability" has been changed to mean "when a police officer serving in any capacity at a regular police department of a participating municipality becomes so physically or mentally disabled, . . . while in, and in consequence of, the performance of authorizing activities while on duty as an officer that he or she is unable to perform the required duties of a police officer." "Normal disability benefit" also is redefined in the amendment to mean the greater of 2 ½ % of the members final average salary multiplied by 20 years, notwithstanding the years of actual credited service OR 2 ½ % of the members final average salary multiplied by the years of credited service not to exceed 30 years, if the officer has more than 20 years of credited service. Section 50-115 is amended with regard to awarding disability benefits to members determined to have a permanent in-line disability.